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METABOLIC RESEARCH ASSOCIATES, INC.,  
U.S.A. HEALTH, INC., AND L. SCOTT HOLMES

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MEDLAB, INC., et al.,

Defendants.

No. C-08-00822 SI

**SUBSEQUENT JOINT CASE  
MANAGEMENT STATEMENT**

Further Case Management Conference

Date: September 22, 2008

Time: 2:30 PM

Place: Courtroom 10, 19<sup>th</sup> Floor

1 Plaintiff Federal Trade Commission and Defendants Medlab, Inc., Pinnacle Holdings,  
2 Inc., Metabolic Research Associates, Inc., U.S.A. Health, Inc., and L. Scott Holmes, pursuant to  
3 the Court's order setting a further case management conference, Docket Nos. 31, 36, conferred  
4 on September 4, 2008, and hereby jointly submit this Subsequent Joint Case Management  
5 Statement.

6 **1. Jurisdiction and Service:**

7 **Plaintiff's Position:** No change since the original case management statement filed on  
8 May 8, 2008. Docket No. 26.

9 **Defendants' Position:** No change since the original case management statement filed on  
10 May 8, 2008. Docket No. 26, other than that defendants have withdrawn their opposition to the  
11 propriety of venue.

12 **2. Facts:**

13 **Plaintiff's Position:** No change since the original case management statement filed on  
14 May 8, 2008. Docket No. 26.

15 **Defendants' Position:** No change since the original case management statement filed on  
16 May 8, 2008. Docket No. 26

17 **3. Legal Issues:**

18 **Plaintiff's Position:** No change since the original case management statement filed on  
19 May 8, 2008. Docket No. 26.

20 **Defendants' Position:** No change since the original case management statement filed on  
21 May 8, 2008. Docket No. 26

22 **4. Motions:** The Court held a hearing on Plaintiff's motion to strike affirmative  
23 defenses and jury demand, Docket Nos. 20-21, on July 18, 2008. The Court issued an order  
24 granting in part and denying in part Plaintiff's motion on July 22, 2008. Docket No. 39.

25 **Plaintiff's Position:** Plaintiff anticipates filing a motion for summary judgment.

26 **Defendants' Position:** Defendants anticipate filing a motion for summary judgment.

27 **5. Amendment of Pleadings:**

28 **Plaintiff's Position:** No change since the original case management statement filed on

1 May 8, 2008. Docket No. 26.

2 **Defendants' Position:** No change since the original case management statement filed on  
3 May 8, 2008. Docket No. 26

4 **6. Evidence Preservation:**

5 **Plaintiff's Position:** No change since the original case management statement filed on  
6 May 8, 2008. Docket No. 26.

7 **Defendants' Position:** No change since the original case management statement filed on  
8 May 8, 2008. Docket No. 26

9 **7. Disclosures:** The parties exchanged initial disclosures before May 9, 2008,  
10 consistent with their agreement in the original case management statement filed on May 8, 2008.  
11 Docket No. 26.

12 **Plaintiff's Position:** Plaintiff provided disclosures as described in the original case  
13 management statement filed on May 8, 2008. Docket No. 26.

14 **Defendants' Position:** Defendants provided disclosures as described in the original case  
15 management statement filed on May 8, 2008. Docket No. 26.

16 **8. Discovery:**

17 **Initial Disclosures:** Please see Item 7 above.

18 **Discovery Scope and Schedule:**

19 With respect to the scope of discovery, the parties report no change since the original  
20 case management statement filed on May 8, 2008. Docket No. 26. With respect to the discovery  
21 schedule, please see Item 17 below.

22 **Electronically Stored Information:** The parties have not encountered issues relating to  
23 disclosure or discovery of electronically stored information.

24 **Claims of Privilege or of Protection as Trial-Preparation Materials:** No change since  
25 the original case management statement filed on May 8, 2008.

26 **Discovery Limitations:** No change since the original case management statement filed  
27 on May 8, 2008.

28 **Other Orders:** The parties filed a stipulated proposed protective order on August 5,

2008, Docket No. 41, and the Court entered the order on August 11, 2008. Docket No. 42.

9. **Class Actions:** Not applicable.

10. **Related Cases:** Not applicable.

11. **Relief:**

**Plaintiff's Position:** No change since the original case management statement filed on May 8, 2008. Docket No. 26.

**Defendants' Position:** No change since the original case management statement filed on May 8, 2008. Docket No. 26.

12. **Settlement and ADR:** Pursuant to Civil Local Rule 16-10(d), subsequent case management statements "must report the parties' views about whether using some form of ADR would be appropriate."

**Plaintiff's Position:** Plaintiff does not believe that using any additional ADR to supplement the upcoming private mediation ordered by the Court, Docket No. 29, would be appropriate.

**Defendants' Position:** Defendants do not believe that using any additional ADR to supplement the upcoming private mediation ordered by the Court, Docket No. 29, would be appropriate.

13. **Consent to Magistrate Judge for All Purposes:** No change since the original case management statement filed on May 8, 2008. Docket No. 26.

14. **Other References:** No change since the original case management statement filed on May 8, 2008. Docket No. 26.

15. **Narrowing of Issues:** No change since the original case management statement filed on May 8, 2008. Docket No. 26.

16. **Expedited Schedule:** No change since the original case management statement filed on May 8, 2008. Docket No. 26.

17. **Scheduling:** The Court set the schedule for future proceedings in its pretrial preparation order entered May 22, 2008. Docket No. 31. The parties filed a stipulated proposed extension order on September 8, 2008, Docket No. 43, requesting the following modifications to

1 accommodate the medical condition of a witness, to facilitate the remaining discovery, and to  
 2 account for the winter holidays:

Matter	Original Date	Proposed Date
Trial	3/23/09	6/8/09
Pre-Trial conference	3/10/09	5/19/09
Private mediation (Docket No. 29)	1/09	4/09
Last day for hearing dispositive motions	11/21/08	3/27/09
Dispositive motion replies due	11/7/08	2/20/09
Dispositive motion oppositions due	10/31/08	2/6/09
Last day to file dispositive motions	10/17/08	1/9/09
Discovery cut-off	10/13/08	11/14/08
Designation of rebuttal experts	9/12/08	10/12/08

13 **18. Trial:** The Court has set a trial in this matter for March 23, 2009, at 8:30 AM,  
 14 and has estimated the trial will last four (4) days. Docket No. 31. The parties have requested  
 15 that the Court move the trial date to June 8, 2009. Please see Item 17 above.

16 **19. Disclosure of Non-party Interested Entities or Persons:**

17 **Plaintiff's Position:** No change since the original case management statement filed on  
 18 May 8, 2008. Docket No. 26.

19 **Defendants' Position:** No change since the original case management statement filed on  
 20 May 8, 2008. Docket No. 26.

21 **20. Such other matters as may facilitate the just, speedy, and inexpensive**  
 22 **disposition of this matter:**

23 **Plaintiff's Position:** No change since the original case management statement filed on  
 24 May 8, 2008. Docket No. 26.

25 **Defendants' Position:** No change since the original case management statement filed on  
 26 May 8, 2008. Docket No. 26.

Respectfully submitted,

DATED: September 5, 2008

/s/ Evan Rose

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DATED: September 8, 2008

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